HIGH COURT OF JUDICATURE AT BILASPUR : (C.G.)

Writ Petition No. 2436 of 2003

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PETITIONERS:

1. Abdul Naeeym
   Aged about 48 years
   S/o Haji Abdul Rahim
2. Abdul Kayyum, aged about 46 years, S/o Haji Abdul Rahim
3. Abdul Karim, aged about 36 years, S/o Haji Abdul Rahim

(All resident of Ahmedji Colony Nalghar, Behind Netaji Stadium Baijnathpara Ward, Raipur, Distt.:Raipur)

-Versus-

RESPONDENTS:

1. State of Chhattisgarh, Through the Secretary Department of Revenue Govt. of Chhattisgarh D.K.S. Bhavan, Raipur.
2. The Collector District Dhamtari
3. Thc Tchsildar, Dhamtari
4. Nagar Palika Parishad Dhamtari, throughthe President Nagar palika Parishad, Dhamtari.
5. Municipal Corporation, Raipur, through the Commissioner, Municipal Corporation, Raipur.
6. President, Board of Revenue, Raipur.

ORDER post for 2nd September, 2003.

Sd/-
L.C. Bhadoo
Judge

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Shri S.S. Rajput, Advocate — For the petitioners.

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ORDER

(Passed on 22nd September, 2003)

BY HON'BLE SHRI L.C. BHADOO J.

1. The petitioners have filed this writ petition under Article 226/227 of the Constitution of India by which they have challenged the order passed by the Board of Revenue, dated 12-5-2003 and that of Tchsildar datcd 9-8-2000.

2. The case of the petitioners is that the petitioners applied for mutation in respect of land situated at Dhamtari ad measuring 39,812 sq. ft. The mutation was claimed on the basis of Hibba in favour of the petitioners by their father. The land comprised of both bhoomiswami and Nazul lands. Their father purchased several properties at Dhamtari and Raipur through a sale deeds, Annexures-P/1, P/2, P/3 and P/4. Their father was being sole and exclusive owner regarding these properties and according to their personal law as they are governed by Hanafi School of Sunni Law made a oral gift in favour of the petitioners regarding these lands, as he was entitled to make Hibba because he was absolute owner and possession in the property and the entire property was devolved on the petitioners under Hibba and accordingly they applied for mutation in their names.

3. The petitioners applied for mutation regarding Nazul land ad measuring 861.60 sq. ft. plot Nos. 36/1 and 31/1 at sheet No.20 and the Nazul officer after recording the statement of their father passed an order in their favour on 25th March 2000 and the same was communicated to the petitioners and the petitioners applied for mutation of their names to the

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Municipality because the land was under municipal limits Dhamtari. The sisters of the petitioners objected the same mutation and claimed their right on the strength of inheritance and the Municipality mutated the names of the petitioners in respect of the entire land. Regarding Bhoomiswami land the petitioners applied for the mutation of their names in Revenue Record, Dhamtari which was objected by the sisters of the petitioners on the ground of inheritance and ultimately the Tehsildar failed to mutate the names of the petitioner which is contrary to the Section 110 read with Section 32 of the Land Revenue Code and the petitioners filed an appeal before the Sub Divisional Officer, Dhamtari who vide order dated 27-11-2002 passed an order remanding the case to the Tehsildar with a direction to decide the case on merit after giving parties an opportunity of hearing and allowed the parties to adduce evidence. Whereas, in respect of Nazul land the sisters of the petitioners filed an appeal before the S.D.O. who dismissed that appeal. The order of the S.D.O. was challenged before the Board of Revenue and the Board of Revenue vide order dated 12-5-2003 dismissed the appeal, but set-aside the order of the S.D.O. and maintained the order passed by the Tehsildar dated 9-8-2000.

4. I have heard the learned counsel for the petitioners and also perused the order of the Tehsildar, S.D.O. and Board of Revenue.

5. The Tehsildar after going through the contention of both the parties reached to the conclusion that there is dispute between the brothers and sisters regarding their rights on the various properties left by their father. On the one hand, the brothers are

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claiming their title based on the Hibba executed in their favour by their father. On the other hand, the sisters are claiming their right based on their right under inheritance and their contention was that even their father was not entitled to gift the whole property. Therefore, the debatable dispute exists among the parties and the Tehsildar had decided that the parties should get their right decided by the Civil Court.

6. In the first instance, I do not find any illegality and infirmity in the order of Tehsildar, which has been affirmed by the Board of Revenue. Moreover, in writ jurisdiction the disputed facts, which require thorough investigation, cannot be adjudicated upon. As mentioned above that both the parties are claiming their rights regarding the properties left out by their father. The petitioners are claiming their rights based on the Hibba whereas, the sisters are claiming their rights based on inheritance and their contention was also that their father was not in absolute right to gift whole property to their brothers. Therefore, these questions are disputed facts which can be decided only after giving an opportunity of hearing to both the parties and allowing the parties to adduce the evidence which cannot be gone into, in the writ jurisdiction, therefore, this writ petition does not lie. The same is liable to be dismissed and it is dismissed.

Sd/-
L.C. Bhadoo
Judge

09/09/08